

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BARBARA A. McGOWAN,

Plaintiff,

-v-

TOWN OF EVANS, et al.,

Defendant.

DECISION AND ORDER
15-CV-672-A

This is a police-misconduct case brought by Plaintiff Barbara A. McGowan against the Town of Evans and six employees of the Town of Evans Police Department. The case was referred to Magistrate Judge Michael J. Roemer pursuant to 28 U.S.C. § 636(b)(1) for the conduct of pretrial proceedings. On September 13, 2017, Magistrate Judge Roemer filed a Report and Recommendation (Dkt. No. 33) that recommends that the Defendants' joint motion pursuant to Fed. R. Civ. P. 56 for summary judgment (Dkt. No. 27) be granted in part and denied in part.

The Defendants have filed objections to the Magistrate Judge's Report and Recommendation. In view of the parties' extensive filings, the Court assumes the parties' close familiarity with the facts, legal issues, and prior proceedings, and writes only to describe the Court's findings and rulings. The Court adopts the Report and Recommendation and grants the Defendants' Rule 56 motion for summary judgment in part and denies it in part.

Plaintiff McGowan's testimony whether she used abusive or obscene language during the events before her arrest for disorderly conduct in violation of New York Penal Law § 240.20 is not so equivocal that the Court can find that no reasonable jury

could permissibly credit her explicit denials. See *e.g.*, Dkt. No. 27-4, p. 47. As a result, the Court agrees with the reasoning of Magistrate Judge Roemer that there are disputes over material facts with respect to Plaintiff's three causes of action arising from allegations that her arrest by some Defendants was an unlawful detention. These are the First, Fifth and Sixth Causes of Action in the Amended Complaint, and they allege a § 1983 claim for an unconstitutional detention and seizure of her person, a common law false arrest claim, and a common law false imprisonment claim, respectively.

Accordingly, for the reasons stated by the Magistrate Judge, Defendants' motion for summary judgment as to Plaintiff's First Cause of Action is granted as to the Town of Evans and Officers Kauzala, Detective Green and Lieutenant Smith, but denied as to Officers DeJohn, Stonitsch, and Castle in their individual capacities. Defendant's motion as to Plaintiff's Fifth and Sixth Causes of Action is granted as to Officer Kauzala, Detective Green, Lieutenant Smith and Officer Castle, but denied as to the Town of Evans and Officers DeJohn and Stonitsch.

Defendants' motion pursuant to Rule 56 for summary judgment as to Plaintiff McGowan's Second Cause of Action alleging excessive use of force as it relates to her arrest and her treatment as she was escorted to and seated in the nearby dispatch trailer is granted as to the Town of Evans, Officer Kauzala, Detective Green, and Lieutenant Smith, but denied as to Officers DeJohn, Stonitsch, and Castel. Defendant's motion for summary judgment is granted in its entirety as to Plaintiff's Third Cause of Action purporting to allege a Due Process violation, her Fourth Cause

of Action purporting to allege a battery claim, her Seventh and Eighth Causes of Action for negligent and intentional infliction of emotional distress, along with her Ninth Cause of Action for negligent hiring by the Town of Evans. Finally, summary judgment is granted as to her punitive damages claim against the Town of Evans, but denied as a claim against the individual Defendants.

CONCLUSION

The Court has carefully reviewed the Report and Recommendation, the objections, response, and reply submitted by the parties, and upon *de novo* review pursuant to 28 U.S.C. § 636(b)(1), it is hereby

ORDERED, pursuant to 28 U.S.C. § 636(b)(1), that the Report and Recommendation (Dkt. No. 33) is hereby accepted in full and adopted as the ruling of the Court upon the Defendants' motion for summary judgment (Dkt. No. 27), and it is further

ORDERED that counsel shall appear to set a date for trial on December 19, 2017, at 9:30 a.m.

IT IS SO ORDERED.

S/Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: November 21, 2017